88-1314

No.

FILED
FEB 17 1989
JOSEPH F. SPANIOL, JR.
CLERK

In the

Supreme Court of the United States

October Term, 1988

Morris F. Cranmer, Jr.,
Petitioner,

V.

United States of America,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SAMUEL A. PERRONI
Counsel of Record

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Little Rock, Arkansas 72211
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Attorney for Petitioner

Dated: February 5, 1989

QUESTIONS PRESENTED

1. Whether an indictment containing substantive allegations in the disjunctive can satisfy a defendant's Fifth Amendment guarantee that he be tried only on charges determined by a grand jury.

2. Whether an indictment charging false statement violations can meet the constitutionally required standards of specificity required by the Court in *Russell v. United States*, 369 U.S. 749, 82 S.Ct. 1038, 8 L.Ed.2d 255 (1962) where the indictment fails to allege and identify particular false statements.

3. Whether a defendant can knowingly, intelligently, and voluntarily waive his constitutional right to trial by jury where his decision was based upon material misrepresentations of law and fact.

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No.

In the Supreme Court of the United States

October Term, 1988

Morris F. Cranmer, Jr.,
Petitioner,

V.

United States of America,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Morris F. Cranmer, Jr., petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINION BELOW

The Opinion of the Court of Appeals for the Eighth Circuit, filed on November 1, 1988, is attached hereto as Appendix A (pp. A1-A4). The December 12, 1988, denial of Petitioner's Motion for Rehearing and Suggestion for Rehearing in En Banc is attached as Appendix B (p. B1).

JURISDICTION

The Judgment of the Court of Appeals for the Eighth Circuit was entered on November 1, 1988. A timely Petition for Rehearing and Suggestion for Rehearing En Banc was denied on December 12, 1988. This Petition for a Writ of

Certiorari was filed within sixty (60) days of that date. This Court's jurisdiction is invoked to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, FEDERAL STATUTES AND RULES INVOLVED

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a . . . infamous crime, unless on a presentment or indictment of a grand jury, . . . nor be deprived of life, liberty, or property without due process of law . . . .

The Sixth Amendment to the United States Constitution states:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, . . . , and to be informed of the nature and cause of the accusation . . . .

18 U.S.C. § 1014 states:

> Whoever knowingly makes any false statement or report, . . . for the purpose of influencing in any way the action of . . . any bank the deposits of which are insured by the Federal Deposit Insurance Corporation . . . upon any application, advance, . . . or loan, . . . shall be fined not more than $5,000.00 or imprisoned not more than two years, or both.

Rule 23(a) of the Fed.R.Crim.P. provides:

> (a) Trial by Jury. Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the government.

STATEMENT OF THE CASE

The Indictment in this case [1] accused Cranmer of violating the provisions of 18 U.S.C. § 1014. According to the indictment, on June 30, 1982, and January 11, 1983, Cranmer knowingly and willfully made material false statements to two banks in interim construction loan draw requests. [2] The grand jury that returned the indictment against Cranmer was not the same grand jury that received the affidavits that formed the basis of the indictment.

A motion to Dismiss was denied by the trial court and that decision was affirmed by the Eighth Circuit Court of Appeals.

The case was tried by the district court sitting without a jury. The uncontradicted facts concerning jury waiver by Cranmer were contained within the only affidavit on the subject presented to the district court and ultimately to the Eighth Circuit Court of Appeals. That affidavit is attached as Appendix E (pp. E1-E4).

1.
Cranmer was charged with having violated 18 U.S.C. § 1014 on ten occasions, but was only tried on Counts IV and X. The remaining counts were dismissed prior to trial and were identical to Counts IV and X with the exception of the dates of the alleged offenses and the amounts of the draw requests. Only Counts IV and X are included for the Court's consideration of this Petition. See Appendix C (pp. C1-C4).

2.
One of the Affidavits, with attachment, is included as Appendix D (pp. D1-D4).

REASONS FOR GRANTING THE WRIT

This case presents critical questions concerning the indictment provision of the Fifth Amendment to the United States Constitution and the jury trial provision of the Sixth Amendment to the United States Constitution.

1. WHETHER AN INDICTMENT CONTAINING SUBSTANTIVE ALLEGATIONS IN THE DISJUNCTIVE CAN SATISFY A DEFENDANT'S FIFTH AMENDMENT GUARANTEE THAT HE BE TRIED ONLY ON CHARGES DETERMINED BY A GRAND JURY.

That portion of the indictment against Cranmer which attempts to set forth how he violated 18 U.S.C. § 1014 states:

> . . . whereas in truth and fact, as MORRIS F. CRANMER, JR. then knew, a substantial part of the funds previously advanced had not been applied to the payment of obligations due for materials, labor and construction, and that a substantial part of the itemized draw request dated June 30, 1982, did not represent items due *or* to be incurred for labor, materials and other costs in connection with such construction, but rather *a substantial amount* of such funds and obligations had been *or* were used and incurred for purposes other than the construction of the laboratory facility at Redfield, Arkansas, *or* the obligations had been *or* were wholly fictitious, all in violation of Title 18 U.S.C. § 1014. (Emphasis supplied)

As noted by the emphasis placed on the use of the word "or", it is obvious that the indictment contains clearly impermissible allegations in the disjunctive.

A close examination of the indictment reveals that the conduct alleged to have been in violation of Section 1014 is divided into two parts with the second part divided into at

least four subparts. It is axiomatic that federal pleading requires that an indictment charge in the conjunctive. *United States v. Hicks*, 619 F.2d 752, 758 (8th Cir. 1980). An indictment that alleges several acts in the disjunctive fails to inform a defendant which of the acts he is charged with having committed, and the indictment is therefore legally insufficient. *United States v. Bean*, 564 F.2d 700, 705 (5th Cir. 1977) and *Joyce v. United States*, 454 F.2d 971 (D.C. Cir. 1971).

In affirming the district court, the panel of the Eighth Circuit held that the charging portion of the indictment was "clear and specific and (did) not charge in the disjunctive." The panel went on to state that the "language to which appellant objects is not in the charging portion of the indictment, but rather set out the details supporting the allegation that appellant's action constituted a knowing false statement." Appendix A p. A2.

The Eighth Circuit's opinion is, as is evident from an examination of the indictment, clearly in error. There is absolutely no way to tell, from the indictment, whether a majority of the grand jurors who returned the indictment in Cranmer's case relied upon any one of the multiple allegations.

The charging portion of the indictment, that is, that portion of the indictment which attempts to descend to the particulars as required by this Court in *Russell v. United States*, 369 U.S. 749, 82 S.Ct. 1038, 8 L.Ed.2d 255 (1962), charges in the disjunctive and is, therefore, legally insufficient.

This Court, in *Russell v. United States, supra*, held that it is a basic principle of criminal pleading that where the definition of an offense, whether it be at common law or by statute, includes generic terms, it is not sufficient for the indictment to charge the offense in the same generic terms. The indictment must state the species, that is, "it must

descend to the particulars." *Russell v. United States*, 82 S.Ct. 1038.

If one were to eliminate that portion of the indictment against Cranmer which impermissibly charges in the disjunctive, the indictment would be nothing more than a false statement charge in generic terms. Accordingly, the indictment fails to meet the required standards embodied in the Constitution of the United States and accepted concepts of pleading in criminal cases.

The importance of the historic guarantee of the provision for indictment by a grand jury has long been recognized, *Ex Parte Baine*, 121 U.S. 1, 7 S.Ct. 781, 30 L.Ed. 849 (1887), and the substantial safeguard of the guarantee to those charged with serious crimes cannot be eradicated under a claim that variations are mere technical departures from the rules. *Smith v. United States*, 360 U.S. 1, 79 S.Ct. 991, 3 L.Ed.2d 1041 (1959). Any other rule would place the rights of the citizen, which were intended to be protected by the constitutional provision, at the mercy of the prosecuting authority. See *Ex Parte Baine, supra*, at 121 U.S. 13.

2. WHETHER AN INDICTMENT CHARGING FALSE STATEMENT VIOLATIONS CAN MEET THE CONSTITUTIONALLY REQUIRED STANDARDS OF SPECIFICITY REQUIRED BY THE COURT IN *RUSSELL V. UNITED STATES*, 369 U.S. 749, 82 S.Ct. 1038, 8 L.Ed.2D 255 (1962) WHERE THE INDICTMENT FAILS TO ALLEGE AND IDENTIFY PARTICULAR FALSE STATEMENTS.

The counts of the indictment upon which Cranmer was convicted contained no specifically alleged false statements. The operational language of the indictment, that is, the language purporting to allege a violation of a federal criminal statute, merely contains multiple allegations in the disjunctive which are also vague and uncertain.

Because of the inherent dangers in vague and unspecified generic term charges (such as false statement charges), the courts have been particularly sensitive to those dangers and have found indictments to be lacking when they fail to adequately charge the factual circumstances underlying the legal allegations. See *United States v. Elliott*, 689 F.2d 178 (10th Cir. 1982); *United States v. Cecil*, 608 F.2d 1294 (9th Cir. 1979); *Lowenburg v. United States*, 156 F.2d 22 (10th Cir. 1946); *United States v. Piccolo*, 696 F.2d 1162 (6th Cir. 1983).

In *Piccolo*, the Sixth Circuit discussed a triad of functions that the indictment serves. Citing *Russell v. United States*, *supra*, the panel in *Piccolo* held that an indictment: (1) had a notice function; (2) must be sufficiently specific to prevent double jeopardy; and (3) must serve both as a check on the grand jury and as a link between the grand jury's consideration and the prosecutor's case at trial.

Prior to *Russell*, this Court held in *Stirone v. United States*, 361 U.S. 212, 80 S.Ct. 270, 273, 4 L.Ed.2d 252 (1960) stated that:

> The very purpose of the requirement that a man be indicted by a grand jury is to limit his jeopardy to offenses charged by a group of his fellow citizens acting independently of either prosecuting attorney or judge.

This fundamental principle was designed to ensure that the charges returned by the grand jury, and the evidence upon which those charges were based, is the same as the facts presented to the fact finder at trial. For instance, in Cranmer's case, based upon the allegations of the indictment, there is no way to tell what evidence, representation, theory, or a combination thereof, caused a majority of the grand jurors returning the indictment to find probable cause to believe that Cranmer violated the provisions of 18 U.S.C. § 1014. In addition, the indictment speaks of a "substantial amount" of the draw request being

used for what was characterized as improper purposes. Yet the indictment doesn't tell Cranmer which items on the draw request (affidavit) were alleged to be false statements. As a consequence, the indictment fails to meet the required standards of specificity embodied in the due process clause and grand jury clause of the Constitution of the United States.

3. WHETHER A DEFENDANT CAN KNOWINGLY, INTELLINGENTLY, AND VOLUNTARILY WAIVE HIS COINSTITUTIONAL RIGHT TO TRIAL BY JURY WHERE HIS DECISION WAS BASED UPON MATERIAL MISREPRESENTATIONS OF LAW AND FACTS.

The record made when Cranmer went before the district court to waive his constitutional right to trial by jury reflects that the waiver was pursuant to an agreement which included the jury waiver as a condition precedent. The transcript is attached as Appendix F (pp. F1-F4).

From the transcript and Cranmer's affidavit, it is clear that three things were to happen after Cranmer waived his constitutional right to trial by jury. They were as follows: (1) the government was to drop eight counts of the indictment; (2) there was to be no evidence introduced concerning the eight counts; and (3) the Defendant was to be able to plead "no contest" with probation to the remaining charges.

Representations concerning the effect and seriousness of the "no contest" plea were also made to Cranmer. Finally, two out of three of the conditions associated with Cranmer's jury trial waiver did not materialize and the representations turned out to be untrue. However, when Cranmer learned that the representations concerning the effect and seriousness of a "no contest" plea were untrue, he was told he could not reverse the jury trial waiver. Appendix E (pp. E1-E4).

A trial by jury may only be waived where the Defendant's decision is voluntary, knowing, and intelligent. *Patton v. United States*, 281 U.S. 276, 312, 50 S.Ct. 253, 263, 74 L.Ed. 854 (1930) and *U.S. Ex El McCann v. Adams*, 320 U.S. 220, 64 S.Ct. 14, 88 L.Ed. 4 (1943). Moreover, the waiver of this important right is effective only where it is not a product of duress or coercion. *United States v. Martin*, 704 F.2d 273 (6th Cir. 1983).

From the record, it is clear that Cranmer agreed to waive his jury trial based upon erroneous representations and the fact that it was to occur *before* a plea of "no contest" to certain counts of the indictment. While Cranmer acknowledged that he understood his right to jury trial, it was obviously a product of the representations that were made to him and his understanding that the waiver was required to take place prior to his entry of a "no contest" plea. As a consequence, Cranmer's jury trial waiver was not a knowing, voluntary, and intelligent act and he should have been granted a new trial.

The right to trial by jury is the constitutionally preferred method of disposing of criminal cases and a waiver should not be found to have occurred under the circumstances of this case.

CONCLUSION

For the reasons stated herein, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

SAMUEL A. PERRONI
Counsel of Record

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(501) 227-8999

Attorney for Petitioner

Dated: February 5, 1989

APPENDIX A
(Filed Dec. 30, 1988)

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 88-1588

United States of America	*
	*
Appellee,	*
	* Appeal from the United
v.	* States District Court
	* for the Eastern
Morris F. Cranmer, Jr.	* District of Arkansas
	*
Appellant.	*

Submitted: September 19, 1988

Filed: November 1, 1988

Before MCMILLIAN, FAGG and MAGILL, Circuit Judges.

PER CURIAM.

Morris F. Cranmer, Jr. appeals from a final judgment entered in the District Court [1] for the Eastern District of Arkansas, after a non-jury trial, finding him guilty of two

1.
The Honorable Henry Woods, United States District Judge for the Eastern District of Arkansas.

counts of knowingly and willfully making a materially false statement to a federally insured national bank in violation of 18 U.S.C. § 1014. The district court sentenced appellant to six months of community service on count IV, and to ninety days of community service on count X to be served consecutively. For reversal, appellant argues that the district court erred in (1) refusing to dismiss the indictment and (2) denying his motion for a new trial. For the reasons discussed below, we affirm the judgment of the district court.

Appellant argues that the district court should have dismissed the indictment returned by the grand jury because the charges are made in the disjunctive. It is generally true that indictments should not charge in the disjunctive. *United States v. Hicks*, 619 F.2d 752, 758 (8th Cir. 1980). A careful review of the indictment in question, however, reveals that the charging portion of the indictment is clear and specific and does not charge in the disjunctive. The language to which appellant objects is not in the charging portion of the indictment, but rather set out the details supporting the allegation that appellant's action constituted a "knowing" false statement.

Appellant further argues that the indictment lacked the specificity constitutionally required to give him notice. However, the indictment clearly and specifically states the crime that appellant is accused of and the relevant section of the United States Code. An indictment only need satisfy a defendant's constitutional right to know with what he or she is charged. It need not set forth specific evidentiary proof that will be introduced at trial. *United States v. Diecidue*, 603 F.2d 535, 547 (5th Cir.), *cert. denied*, 449 U.S. 946 (1979).

Appellant further argues that the district court erred in denying his motion for a new trial because his waiver of jury trial was not in writing, and was not made voluntarily, knowingly, and intelligently. We find this claim to be meritless. A written waiver of jury trial is unnecessary when a defendant appears in open court and states his or her intention to waive trial by jury. *United States v. McCurdy*, 450 F.2d 282 (9th Cir.

1971). Appellant's waiver was made in open court and on the record. The district court noted that appellant is highly educated and he had consulted his attorney. Further, the court questioned appellant concerning his understanding of his right to a trial by jury. Appellant indicated that he understood and that he waived his right to trial by jury.

Having carefully reviewed the indictment and the transcript of the waiver of jury hearing, we conclude that the district court properly denied appellant's motion to dismiss the indictment and motion for a new trial. Accordingly, the judgment of the district court is affirmed. *See* 8th Cir. R. 14.

A true copy.

Attest: /s/ Robert D. St. Vrain

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX B

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 88-1588-EA

United States of America	*
	*
Appellee,	*
	* Appeal from the United
v.	* States District Court
	* for the Eastern
Morris F. Cranmer, Jr.	* District of Arkansas
	*
Appellant.	*

Appellant's petition for rehearing en banc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied.

December 12, 1988

Order Entered at the Direction of the Court:

/s/ Robert D. St. Vrain

Clerk, United States Court of Appeals, Eighth Circuit.

APPENDIX C
(Filed March 17, 1987)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

United States of America	)
	)
v.	) No. LR-CR-87-56
	)
Morris F. Cranmer, Jr.	)
	)

INDICTMENT

THE GRAND JURY CHARGES:

* * * *

COUNT IV

That on or about the 30th day of June, 1982, in the Eastern District of Arkansas, begun there and completed in the Northern District of Texas, MORRIS F. CRANMER, JR. did knowingly and willfully make and cause to be made a material false statement to Simmons First National Bank and Republic National Bank of Dallas, Texas, for the purpose of influencing the actions of said banks, the deposits of which were insured by the Federal Deposit Insurance Corporation, upon an interim construction loan draw, which loan was to be refinanced and paid off through a subsequent loan guaranteed by the Farmers Home Administration, in that in an affidavit in connection with an itemized draw request, MORRIS F. CRANMER, JR., as president of Intox Laboratories, Inc. represented that all funds advanced as of June 30, 1982, by Republic National Bank of Dallas to Intox Laboratories, Inc. had been applied to the payment of obligations due for materials, labor and other costs incurred in connection with the construction of a laboratory

facility in Redfield, Arkansas, and for no other purpose, and further represented that the sum of $801,553.59 represented amounts due for labor, materials and other costs incurred in connection with such construction, for the period ending June 30, 1982, as itemized, and that all sums advanced by the bank on account of such itemized request would be used solely for the purpose of paying the said obligations, and for no other purpose, whereas in truth and fact as MORRIS F. CRANMER, JR. then knew, a substantial part of the funds previously advanced had not been applied to the payment of obligations due for materials, labor and other costs incurred in connection with such construction, and that a substantial part of the itemized draw request dated June 30, 1982, did not represent items due or to be incurred for labor, materials and other costs in connection with such construction, but rather a substantial amount of such funds and obligations had been or were used and incurred for purposes other than the construction of the laboratory facility at Redfield, Arkansas, or the obligations had been or were wholly fictitious, all in violation of Title 18, United States Code, Section 1014.

* * * *

COUNT X

That on or about the 11th day of January, 1983, in the Eastern District of Arkansas, begun there and completed in the Northern District of Texas, MORRIS F. CRANMER, JR. did knowingly and willfully make and cause to be made a material false statement to Simmons First National Bank and Republic National Bank of Dallas, Texas, for the purpose influencing the actions of said banks, the deposits of which were insured by the Federal Deposit Insurance Corporation, upon an interim construction loan draw, which loan was to be refinanced and paid off through a subsequent loan guaranteed by the Farmers Home Administration, in that in an affidavit in connection with an itemized draw request, MORRIS F. CRANMER, JR., as president of Intox Laboratories, Inc. represented that all funds advanced as of January 10, 1983, by Republic National

Bank of Dallas to Intox Laboratories, Inc. had been applied to the payment of obligations due for materials, labor and other costs incurred in connection with the construction of a laboratory facility in Redfield, Arkansas, and for no other purpose, and further represented that the sum of $692,108.33 represented amounts due for labor, materials and other costs incurred in connection with such construction, for the period ending December 10, 1982, as itemized, and that all sums advanced by the bank on account of such itemized request would be used solely for the purpose of paying the said obligations, and for no other purpose, whereas in truth and fact as MORRIS F. CRANMER, JR. then knew, a substantial part of the funds previously advanced had not been applied to the payment of obligations due for materials, labor and other costs incurred in connection with such construction, and that a substantial part of the itemized draw request dated January 11, 1983, did not represent items due or to be incurred for labor, materials and other costs in connection with such construction, but rather a substantial amount of such funds and obligations had been or were used and incurred for purposes other than the construction of the laboratory facility at Redfield, Arkansas, or the obligations had been or were wholly fictitious, all in violation of Title 18, United States Code, Section 1014.

A TRUE BILL.

/s/ Joe E. Stacey
FOREMAN

/s/ George W. Proctor
UNITED STATES ATTORNEY/
ASSISTANT

/s/ Brent Bumpers
Assistant U.S. Attorney
P.O. Box 1229
Little Rock, AR 72203
(501) 378-5342

APPENDIX D

AFFIDAVIT
Disbursement #6

STATE OF ARKANSAS

COUNTY OF JEFFERSON

Before me, the undersigned authority, on this day personally appeared Morris F. Cranmer, Jr., President of Intox Laboratories, Inc., who, being first duly sworn by me, upon oath deposes and says that:

1. He is duly authorized to make this affidavit and is fully cognizant of all facts and matters herein stated.

2. All funds heretofore advanced by REPUBLIC NATIONAL BANK OF DALLAS (the "Bank") to Intox Laboratories, Inc. (the "Borrower") upon a loan by Bank to Borrower for use in connection with the construction of improvements on (See Attachment A of Previous draw affidavits) (*Lot and Block*) in the City of Redfield, County of Jefferson, State of Arkansas, have been applied to the payment of obligations due by Borrower for materials, labor and other costs incurred in connection with such construction, and for no other purpose.

The sum of 801,553.59 (initial MDB 7/1/82) represents items due by Borrower for labor, materials and other costs incurred in connection with such construction as itemized on reverse side for period ending June 30, 1982.

Sums advanced by Bank on account of the itemized estimate will be used solely for the purpose of paying the obligations owing by Borrower as shown on the itemized estimate, and for no other purpose.

5. Upon disbursement by Borrower of the funds advanced by Bank on account of the itemized estimate, all

obligations for labor, materials and other costs heretofore incurred by Borrower in connection with such construction and which are due and payable will be fully paid and satisfied.

6. Affiant understands that this affidavit is made for the purpose of inducing Bank to make an advance to Borrower and that, in making any such advance, Bank will rely upon the accuracy of the matters stated in this affidavit.

/s/ Morris F. Cranmer, Jr.

Sworn to and subscribed before me this 30th day of June, 1982, to certify which witness my hand and seal of office.

/s/ Vicki Barlow
Notary Public in and for
Jefferson County, Arkansas

"18 U.S.C. 1014.—Whoever knowingly makes any false statements or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of . . . any bank the deposits of which are insured by the Federal Deposit Insurance Corporation . . . , upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than $5,000 or imprisoned not more than two years, or both."

ITEMIZED DRAW REQUEST

		PRIOR REQUESTS	THIS REQUEST	TOTAL TO DATE
LAND	Land Allocation	135,000.00		135,000.00
	Title Insurance	6,505.00		6,505.00
	Deeds, Rec., ETC.	60.00		60.00
HARD COST	CONSTRUCTION			
	Sitework			
	Bldg. or Shell	185,672.61	605,992.14	791,664.75
	Finish			
	Paving			
	Landscaping			
	SUB-TOTAL	327,237.61	605,992.14	933,229.75
	DEVELOPMENT			
	Engineering	363,[illegible]7.42	38,475.00	402,462.42
	Rough Grading	55,[illegible]4.00		55,874.00
	Water			
	Sanitary Sewer			
	Elec. - Gas			
	Storm Drainage			
	Streets			
	Off-Site			
	Tap Fees			
	Miscellaneous			
	Equipment	268,[illegible]31.44	80,837.61	349,729.05
	SFNB debt pymt	427,[illegible]37.12		427,237.12
	Equip.Testing	77,[illegible]43.08		77,643.08
	SUB-TOTAL	1,243,[illegible]3.06	119,312.61	1,362,945.67
INTEREST	Interest Allocation	[illegible]0.40		28,960.40
	Fees Allocation			
	Bond Issue costs	110,[illegible]0.00		110,000.00
	SUB-TOTAL	138,[illegible]60.40	-0-	138,960.40
SOFT COST	Architect			
	Engineering			
	Closing Cost			
	Taxes, Legal, etc.	127,959.64		127,959.64
	Survey	2,711.50		2,711.50
	Consulting	112,[illegible]7.43	75,873.84	193,671.27
	Equip. Storage		375.00	375.00
	SUB-TOTAL	249,[illegible]8.57	76,248.84	324,717.41
	TOTAL	1,95[illegible]9.64	801,553.59	2,759,853.23

[illegible] (Basis)

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA PLAINTIFF

VS. NO. LR-CR-87-56

MORRIS F. CRANMER, JR. DEFENDANT

AFFIDAVIT

I, Morris Cranmer, state on oath as follows:

From day one, I was told that I had the option of pleading guilty to one count, with the government dismissing the remaining counts of the Indictment. I refused this because of the problem a guilty conviction would place on my credibility as an expert witness, as well as my position on what I understood the charges against me to be.

On Friday, January 29, 1988, Paul Johnson, David Lewis and I contacted my present counsel, Samuel A. Perroni, to get his advice concerning the waiver of a jury trial in my case. Mr. Perroni stated that he advised against waiving a jury.

Based on that advice, it was decided that I would not waive my right to trial by jury.

On Monday, February 1, 1988, Paul Johnson, David Lewis and I went to Judge Woods' office for the purpose of discussing matters relating to trial exhibits, and the like.

After that business had transpired, Paul Johnson talked to Ms. Gleghorn, Assistant United States Attorney,

privately as we were leaving the third floor of the courthouse. David Lewis and I walked on and waited for him. Paul Johnson told us that Ms. Gleghorn had told him that the government was prepared to drop eight counts of the Indictment if we would waive a jury. We walked across the street to the Legacy to place a phone call to Sam Perroni and at this point a no contest (nolo) plea was suggested as a possible alternative. At that time, because it was the lunch hour, Sam Perroni was out of his office. I was told that I had thirty minutes to say whether we wanted to talk further. No decision was made, however, because I didn't know which counts were involved and the rest of the details. I did not want to just close off the situation with no discussion.

Paul Johnson then called the Judge's office and advised them that we were in the process of these negotiations. He was advised that if we were going to negotiate something it needed to be on the record. At 1:00 P.M. we went to Judge Woods' office. At this point, no decision had been made to do any of this. Paul Johnson then talked with Mr. Bumpers by phone and Mr. Bumpers told him that the deal was off because Ms. Gleghorn did not have the authority to make the initial offer, but that he would think about it and call back. As far as I was concerned, at this point, we were still negotiating.

On Monday, February 1, 1988, between 12:00 Noon and 1:30 P.M. I was also informed that a compromise was possible and that:

A. A nolo plea to one felony count was less serious that a conviction to a misdemeanor;

B. A nolo plea could not be used to impeach me as an expert witness; and

C. A nolo plea would be accepted with probation only.

It was explained to me that the first step of such an undertaking would be to waive the jury so the Judge could consider the plea. I believed that this step was reversible.

About three and one-half hours later a waiver of the jury was entered but the government insisted on two counts. The government had not decided which two counts. It seemed unimportant to me if it was one or two nolo pleas if the assertions in A, B, and C (above) were true. The government agreed to decide which two counts by 5:00 P.M. but did not limit the counts to three until 8:00 P.M. During this entire time, I believed that we could reject the government's choice and go back to a jury, and that we would only have to defend two counts if the case was tried.

I requested Paul Johnson and David Lewis to study the issue of whether a nolo plea to a felony was less important than a guilty plea to a misdemeanor in addition to the ability of others to use a nolo plea against me as an expert witness. I was informed at breakfast the following morning that the assumptions that a nolo plea to a felony was less important than a misdemeanor conviction and that a nolo plea could not be used to impeach me were incorrect. At this point, all the reasons for going before a judge as opposed to a jury had vanished. As I understood it, I had only three remaining options. One, I could proceed before the Judge at trial; two, I could plead nolo to two felony charges; or three, I could plead guilty to one felony charge. Since a nolo to two felony counts was worse than a guilty to one felony count, and I had already rejected that offer, I then rejected the nolo approach.

At Court on Tuesday morning I was told that the nolo plea was anticipated; that I could not reverse my decision with respect to waiving a jury trial; that I could not veto the government's choice of counts and go back to a jury trial; and that the trial would begin that morning.

After the trial began and Mr. Bumpers made his introductory remarks, I was then informed that we would

have to defend the evidence on all ten counts, not just the two.

/s/ Morris Cranmer
MORRIS CRANMER

STATE OF ARKANSAS)
) ss.
COUNTY OF LONOKE)

Subscribed and sworn to before me, a Notary Public, this 22nd day of February, 1988.

/s/ Ena L. Goodbar
NOTARY PUBLIC

My Commission Expires:

9-1-89

Ena/Cranmer2.010

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

United States of America	*
	*
Plaintiff	* No. LR-CR-87-56
	*
vs.	*
	*
MORRIS F. CRANMER	* February 1, 1988
	* 4:14 p.m.
Defendant	* Little Rock, Ark.

WAIVER OF JURY HEARING

BEFORE THE HONORABLE HENRY WOODS, UNITED STATES DISTRICT JUDGE, as follows:

APPEARANCES:

On Behalf of the Plaintiff:

BRENT BUMPERS
LINDA GLEGHORN
U.S. Attorney's Office
Little Rock, Arkansas

On Behalf of the Defendant:

R. DAVID LEWIS
1109 Kavanaugh Blvd.
Little Rock, Arkansas

PAUL JOHNSON
21521 Kanis Road
Little Rock, Arkansas

THE COURT: All right, gentlemen, in the case of the United States vs. Morris F. Cranmer, Jr., I understand the parties have an announcement to make to the Court. Is that right, that you have reached an agreement about certain aspects of this case.

MR. JOHNSON: We have, Your Honor. It is the defendant's desire to waive jury at this time.

THE COURT: Is that agreeable with the Government?

MR. BUMPERS: Yes, Your Honor.

THE COURT: Then let the record show that the jury is waived in this case. Is there anything further?

MR. BUMPERS: Your Honor, we intend, in return for their agreement to waive jury, we have agreed to drop eight counts and proceed on two. We haven't had a chance to decide which two yet.

THE COURT: You will decide in the morning; is that correct?

MR. BUMPERS: We will let them know, we'd say, by five o'clock today.

THE COURT: All right.

MR. BUMPERS: We would rather wait until tomorrow to formally move to dismiss the eight counts, though. I want to make sure, too—We had, as everyone present recalls, a conference off the record earlier relating to a possible conditional plea and other issues that were discussed. I want to make that there are no—None of those sort of issues that might be raised tomorrow. Other than just the plain waiver of jury, proceed with the trial on two counts, no conditions and no nothing.

THE COURT: As I understand, that is the agreement, that jury will be waived and you will select two counts to proceed upon, and when you have selected two counts you will dismiss as far as the other eight counts are concerned.

MR. BUMPERS: That is correct, Your Honor.

THE COURT: I think—I understand the agreement. There is no problem with the agreement. I expect, though, we had better have Mr. Cranmer go up there so we can put in the record what waiver of the jury implies and be sure he understands. I know he does but I think that ought to be in the record.

MR. JOHNSON: Your Honor, as you know, this came up just at the last moment. We intend to file a formal jury waiver in the morning prior to trial.

THE COURT: All right. Just for the record, Mr. Cranmer, you are, I know—I've had you in court before—highly educated. You have a Ph.D, I believe?

THE DEFENDANT: Yes, sir.

THE COURT: And you understand you have a right to a trial by a jury on all counts of this Indictment, as far as that is concerned, if you chose to exercise that right. Do you understand you are giving up your right to a trial by jury on those two counts? I understand the Government proposes to dismiss eight of the counts.

THE DEFENDANT: Yes, sir, that is my understanding.

THE COURT: So you will not have any concern with those eight counts, but as far as these two counts, let the record show that you know that you do have a right to a trial by jury on those two counts.

THE DEFENDANT: Yes, sir.

THE COURT: All right, that's all I wanted to put in the record. You may be seated.

Could I see counsel at the bench? I don't want this on the record unless the parties want to put it on there.

(Bench Conference Not Reported)

THE COURT: Gentlemen, anything further to be taken up here today?

MR. JOHNSON: Nothing from us, Your Honor.

MR. BUMPERS: No, Your Honor.

THE COURT: Well, I will see you, then, at 9:30.

(Court Recessed 4:25 p.m.)

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CERTIFICATE

I, Sandra Smith, CVR, Official Court Reporter for the Eastern District of Arkansas, certify that the foregoing pages contain an accurate transcription of the proceedings in the above-entitled matter.

WITNESS MY HAND this 20th day of April, 1988.

/s/ Sandra Smith, CVR
Sandra Smith, CVR